IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 51 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

HANUBHAI MOHANLAL BRAHAMBHATT

Appearance:
1. Criminal Appeal No. 51 of 1994
MR KC SHAH,APP for Petitioner No. 1
MR KR RAVAL,Amicus Curiae, for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 29/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

1. The State of Gujarat has filed this appeal challenging the judgment and order dated 15.9.1993 passed in Special Case No. 20 of 1991 by the learned Special Judge, Ahmedabad, acquitting the respondent for an offence punishable under section 13(1)(d)(i)(ii) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act').

2. The respondent, at the relevant time, was serving as an Unarmed Head Constable attached to Madhavpura Police Station, Ahmedabad City. The facts as can be gathered from the complaint filed by the complainant Ayubbhai Chhotubhai dated 3.9.1990, briefly stated, are as under:

The complainant is dealing in the business of Bearings in the name and style of Hindustan Bearings. At the entrance of chawl of which he is the resident, there is a shop of iron scrap of one Rafikbhai Kureshi. Sometime prior to the filing of the complaint, one side wall of the said shop was collapsed. Rafikbhai started getting it constructed. However, the residents of the chawl were annoyed at his act as they felt that he had encroached upon more space. It is the case of the complainant that the work of constructing wall was entrusted by said Rafikbhai to the complainant Ayubbhai. It appears that the chawl residents took it that under the guise of repairing the wall, the said Rafik was trying to encroach upon the land than what was originally carved out for him and hence there ensued a quarrel between the chawl residents on one hand and the said Rafikbhai on the other hand. Rafikbhai had to file a caveat in the Civil Court apprehending that the chawl people may pull down the wall. It appears that the said Rafikbhai had also a quarrel with one Abbasbhai, a resident of the said chawl on this issue and both the sides had gone to Madhavpura Police Station on 31.8.1990 at 5.00 p.m. to lodge the complaint. The respondent who was on duty recorded the complaint of the said Abbasbhai and did not record the complaint of Rafikbhai. It is the further case of the complainant that he was informed by the respondent that in the complaint of said Abbasbhai, the present complainant and the wife of the complainant were the accused and that NC complaint was recorded against all of them. The complainant was told by the respondent that though the NC complaint was recorded, he would see to it that some solution is reached in the matter, but for that, the complainant will have to pay Rs. 500/- to him. The respondent also told him that the complainant should approach him after few days when some

way would be found out to solve the problem. But before that, he will have to pay Rs. 100/- to the respondent. It appears that after some negotiations, the complainant paid the respondent Rs. 50/- then and there and then left for his house. One lawyer Mr. Solanki of Rafikbhai told the complainant that as their complaint was not recorded by the respondent, an application should be given to the police station for registration of their complaint and, thus, the said application was given.

It appears that the investigation of the complaint/ application was entrusted to PSI Rana of Dudheshwar Police Chowky who had called both the parties with NC complaint referred to above and put them in the lock up on 31.8.1990. However, they were released on bail on 1.9.1990. It is further the case of the complainant that on 2.9.1990, at about 9.00 p.m., when the complainant was passing by Madhavpura Police Station, the respondent called him and asked him to come to the police station on the next day so that he would see to it that the case was settled and he was further asked to bring the remaining amount of Rs. 50/-. It, however, appears that the complainant was not a willing party to pay the said illegal gratification to the respondent and, therefore, he approached ACB Ahmedabad and lodged his complaint. ACB, on the basis of the complaint of the complainant, called two panch witnesses. They were briefed of the role that they were to play in carrying out the raid of the respondent. The complainant was asked to produce the bribe amount. The currency note was smeared with anthracene powder. The effect of the powder on the note was demonstrated to both the panch witnesses and the complainant with ultra violet lamp and with naked eyes. The smeared note was put in the pocket of the shirt of the complainant with instructions not to touch the same unless and until occasion arises for paying the same to the respondent. The hands of all the concerned were washed cleanly and it was ensured that no particle of powder was left out on the person of raiding party. The panch no.1 Ghanshyam Jaiswal, PW 2 Ex.10 was asked to remain as a panch witness with the complainant and to watch and hear conversation and the events taking place between the respondent and the complainant whereas the other panch witness was asked to remain with the raiding party of ACB. Thereafter, the raiding party left for carrying out raid after drawing first part of the panchanama. On reaching the police station, the complainant and the panch witness reached the spot where the accused was sitting. The complainant tendered the smeared note to the accused who accepted it and thereupon the pre-arranged signals were given to the raiding party

of ACB to immediately reach the spot and raid was carried out, during the course of which, the smeared note was recovered from the person of the accused. Ultra violet lamp experiment was carried out and on getting positive result of powder on both the hands of the respondent and the complainant and their wearing apparels part of which came in contact with the smeared note, complaint was recorded and investigation was set in motion and upon completion of investigation, papers were transmitted through ACB office to the competent authority for the purpose of obtaining sanction to prosecute the respondent. Upon receiving sanction, the prosecution prosecuted the respondent. Chargesheet was submitted by the Inspector, ACB against the respondent.

3. The trial court framed charge at Ex. 4 for the alleged offence under sections 7 and 13(1)(d)(i)(ii) punishable under section 13(2) of the Act. At the end of the trial, after considering and appreciating the evidence on record including further statement of the respondent, the trial court was of the view that the prosecution has failed to prove the charge levelled against the respondent and that the respondent has not committed any offence and, therefore, passed the order acquitting him.

4. At the outset, we may state that the respondent had not engaged any advocate to conduct the case in the trial court even though he was offered the services of a lawyer from Legal Aid and had appeared as a party-in-person. In the present appeal also, originally, he appeared as a party-in- person. However, he accepted our suggestion to engage the services of a lawyer to represent him in the present appeal. We accordingly appointed Mr. K.R.Raval, learned advocate as amicus curiae in the matter.

5. Learned APP Shri KC Shah, after inviting our attention to the entire evidence on record, submitted that the learned trial judge has committed an error in acquitting the respondent in the instant case by overlooking the provisions of section 20 of the Act. In the submission of learned APP, presumption under section 20 will arise in the instant case in view of the fact that the respondent had accepted gratification other than legal remuneration as the marks of anthracene powder were found on the finger tips of both the hands as well as on the left pocket of the shirt of the respondent. It was, therefore, submitted that the order of acquittal in favour of the respondent is required to be quashed and set aside.

6. Mr.K.R.Raval, on the other hand, while supporting the reasonings of the learned trial judge, submitted that the question of presumption of accepting illegal gratification arises provided the prosecution has proved the charge beyond reasonable doubt. It is, therefore, submitted that since the prosecution, in the instant case, has failed to prove the charge, mere finding of the marks of anthracene powder on the fingertips as well as on the left pocket of the shirt will not take the prosecution case to its logical consequence.

7. We have narrated the facts of the complaint of complainant Ayubbhai Chhotubhai in detail and, therefore, we do not propose to re-narrate the evidence of complainant Ayubbhai Chhotubhai, PW 1 Ex.9, panch witness Ghanshyam Jaiswal, PW 2 Ex.10 as well as PI ACB VK Ambaliyar, PW 3 Ex.13 who are examined in this case by the prosecution. We, however, narrate only those details which are not given above while narrating the facts.

8. It is the say of the complainant Ayubbhai that he, in the company of panch no.1 Ghanshyam, after leaving other members of the raiding party, entered the police station. According to the complainant, he informed the respondent that he had come for the work for which he was called. The respondent thereafter inquired from him about the incident. The complainant thereafter asked the respondent to come out of the police station for having a cup of tea. The respondent, by not accepting the offer of tea, asked the complainant to discuss the problem sitting there in the police station itself. The complainant, however, insisted the respondent to come out by informing him that he had some work with him. Accordingly, the complainant, the panch no.1 and the respondent came out of the police station. Again the complainant told the respondent that he had come for the work for which he was called. The complainant inquired as to what was to be done. The respondent thereafter told him that he had a talk with the PSI Rana of Dudheshwar Police Chowky. The complainant thereafter told the respondent that he will directly talk to PSI Rana. After this talk, those three persons again came inside the police station. The respondent asked the complainant and the panch no.1 to sit and accordingly they sat on the bench opposite the respondent. The complainant thereafter took out currency note of the denomination of Rs. 50/- from the pocket with the help of his right hand and offered the same to the respondent. The respondent accepted with his right hand and put it in the left pocket of his shirt. According to the

complainant, he thereafter immediately went to the door and gave a signal. The respondent also followed him. On getting the signal from the complainant, members of raiding party came there. On seeing them, the respondent threw the currency note in the dust bin. According to the complainant, when PI ACB entered the police station, the respondent had already occupied his chair. However, on seeing the Police Inspector, he had gone to another room where the PI Ambaliyar of ACB entered and asked the respondent not to move. It is further the say of the complainant that the panch no.2 took out currency note from the dust bin when he was asked to do so by PI Ambaliyar. Regarding the experiment of ultra violet lamp, the complainant has stated that no marks of anthracene powder were noticed on the person of members of raiding party when the experiment was carried out on them initially. However, the marks of anthracene powder were found on the right hand as well as on the left pocket of the shirt of the complainant as well as on the fingertips of right hand as well as on the outer and inside portion of the shirt of the complainant. Necessary panchanama in that regard was thereafter carried out. Panch no.1 Ghanshyam as well as PI ACB Ambaliyar, in their evidence, have deposed similar to the evidence of the complainant Ayubbhai barring certain discrepancies regarding acceptance as well as throwing of currency note in the dust bin.

9. Reading the evidence of aforesaid prosecution witnesses, the following facts clearly emerge:

(i) The respondent did not demand any illegal gratification when the complainant as well as panch no.l met him in the police station.

(ii) Not only that, but the complainant was not even inclined to go out of the police station and was keen to hear the complainant in the police station itself.

(iii) After some hesitation, when the respondent came out of police station with the complainant and panch no.1, he neither talked anything about the case nor made any demand of illegal gratification. He merely assured the complainant that he would talk to PSI Rana of Dudheshwar Police Chowky who was investigating the case of NC complaint filed against the complainant. Even at that time, the complainant told him not to talk to PSI Rana and he (the complainant) would directly talk to him.

If at all the respondent had any desire to get the amount from the complainant, he would not have missed the said opportunity when all were out of police station. As the complainant himself had asked the respondent to come out of police station, the complainant also would not have missed such an opportunity by paying the amount of Rs.50/-. The raiding party could also have witnessed payment of Rs. 50/-by the complainant to the respondent. The respondent's not demanding the amount when he was out of police station and the assertion of the prosecution witnesses that the amount of Rs. 50/- was offered and received by the respondent in the police station thereafter, will raise a doubt about the credibility of evidence of complainant and other prosecution witnesses. It has come in the evidence that two lady constables as well as PSI Solanki were present at the time of acceptance of the amount by respondent. It is quite unnatural that a junior officer will accept the amount of bribe in presence of a senior officer in the police station itself. It is equally unlikely that the respondent would throw the currency note of Rs. 50/- in the dust bin lying below the table of his superior officer PSI Solanki. Unfortunately, in the instant case, the prosecution has not examined PSI Solanki who could have thrown light on the incident being an independent witness. Thus, the entire story put by the prosecution is not free from doubt. It is not possible to accept the version of prosecution witnesses regarding demand and acceptance of illegal gratification by the respondent. Admittedly, in the instant case, the investigation regarding NC complaint filed against the complainant and his friend Rafikbhai was taken over by PSI Rana of Dudheshwar Police Chowky, an entirely a different police chowky. The respondent was merely an Unarmed Head Constable who could hardly have any influence on the investigation carried out by the PSI Rana. Not only that, PSI Rana had already arrested the complainant as well as Rafikbhai on 31.8.1990. They were in the lock up till the afternoon of 1.9.1990 when they were released on bail. In view of this fact on record, it is difficult to understand as to what type of services the complainant wanted from the respondent. Thus, the entire story put forward by the complainant appears to be a concocted story. It is difficult for us to conclude that the complainant met the accused on 31.8.1990 and it was on that day that the accused put forth the demand of Rs. 100/- as a motive or reward to settle NC complaint against him. The application given by Mr.Solanki, an advocate as claimed by the complainant for non registration of his complaint by the police station

authorities also seems to be a fake story for the reason that the complainant himself has admitted that he did not know the full name of the advocate who gave that complaint. Apart from non examining PSI Solanki, the prosecution has also not examined Rafik Kureshi as also PSI Rana to prove the gravity of the matter and whether the complainant, on 31.8.1990, could have visited Madhavpura Police Station and met the respondent in view of the fact that the complainant was put in lock up upto 31.8.1990 afternoon.

10. From the evidence on record, it is clear that the complainant, in the instant case, in his cross examination, has admitted that many chapter cases/ proceedings were initiated against him and many miscellaneous cases were also filed against him by the present respondent. The learned trial judge has observed in the judgment that the past of the complainant is not free from bonafide and in no case praiseworthy so as to brand him as an independent, uninterested or unbiased person particularly against the respondent and on the contrary, what comes out is that he had indulged in antisocial activities in the past. To rely on such a person to foist a serious crime against the police officer would be a judicial blunder.

11. The complainant, in his cross examination, has admitted that in the year 1989, there were Misc. Cases no. 47 of 1989 and 48 of 1989 filed against him by the present respondent. There was a criminal complaint against him on 16.9.1990 wherein 'C' summary was asked for filing a false complaint. He has also admitted that there was also one complaint from the chawl people for encroachment upon the land. Therefore, the possibility of the complainant taking revenge against the respondent to get rid of him by filing a false complaint with ACB on 3.9.1990 cannot be ruled out. The court cannot overlook the aforesaid surrounding circumstances.

12. The cumulative effect of the aforesaid circumstances would make the prosecution case unbelievable and unreliable. Once the prosecution fails to prove the case against the respondent beyond reasonable doubt, in our opinion, the presumption under section 20 loses its efficacy. Thus, overwhelming circumstances on record make the entire prosecution case unreliable. The mere finding of anthracene powder on the fingertips and on the left pocket of the shirt of the respondent would hardly make the prosecution case believable. The respondent could have overcome the clutches of section 20 of the Act by pointing out

circumstances if he had engaged lawyer for him. In any case, considering the facts and circumstances, the respondent in the instant case, deserves benefit of doubt. Apart from that, this being an acquittal appeal, the learned trial judge, in the instant case, by giving cogent and convincing reasons, has acquitted the respondent which, in no circumstances, can be held to be perverse warranting any interference by this Court. Suffice it to say that we are in total agreement with the reasonings recorded and the conclusion arrived at by her.

13. There being no substance in this appeal, it is dismissed.

(Kshitij R.Vyas,J.)

(Akshay H.Mehta,J.)

sonar/-